

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SYNOPSIS REPORT

Decisions Issued in April 2016

The Board's monthly reports are intended to assist public employers covered by a grievance procedure to monitor significant personnel-related matters which came before the Grievance Board, and to ascertain whether any personnel policies need to be reviewed, revised or enforced. W. Va. Code §18-29-11(1992). Each report contains summaries of all decisions issued during the immediately preceding month.

If you have any comments or suggestions about the monthly report, please send an e-mail to wvgb@wv.gov.

NOTICE: These synopses in no way constitute an official opinion or comment by the Grievance Board or its administrative law judges on the holdings in the cases. They are intended to serve as an information and research tool only.

TOPICAL INDEX
HIGHER EDUCATION EMPLOYEES

<u>KEYWORDS:</u>	Termination; Reasonable Accommodations; Work Schedule; Attendance; Discrimination; Job Duties; Progressive Discipline; Arbitrary and Capricious; Americans with Disabilities Act
<u>CASE STYLE:</u>	<u>Roberts v. Concord University</u> DOCKET NO. 2016-1284-CONS (4/25/2016)
<u>PRIMARY ISSUES:</u>	Whether the disciplinary actions levied against Grievant's is permissible and/or in violation of discretionary progressive discipline procedures.
<u>SUMMARY:</u>	<p>Grievant was an employee who had been provided work place accommodation, for an extended period of time. The terms of Grievant's flex work schedule were not satisfactory to either party. Respondent wanted a more traditional work schedule with accountability. Grievant was desirous of more flexibility, akin to dictating her own daily work hours dependent upon her fluctuating degree of fatigue.</p> <p>Respondent acknowledges that Grievant has certain health issues that may or may not have qualified for accommodations, but which impacts Grievant's fitness for duty. Respondent is of the opinion that it has provided accommodations beyond what would be considered reasonable, going so far as to hire an additional part-time employee to assist with the duties of Grievant's position. Respondent sought to work with Grievant however ultimately reached the conclusion that Grievant's attendance was needed on a more predictable schedule. Respondent specifically informed Grievant that her sua sponte absence from work could not continue and that she must come to work a scheduled more in-line with an approved schedule. Grievant was sanctioned for failing to adhere to an approved work schedule. Grievant is of the opinion that the sanctions are too severe and unwarranted given that she has recognized health conditions which affect her day-to-day activity.</p> <p>Reasonable accommodations does not empower an employee to dictate his or her work schedule to the degree that the employer has little, to no, control regarding the employee's attendance and/or work schedule. Respondent acted in what is recognized as a reasonable manner. Grievant did not establish a prima facie case of discrimination. Respondent established by a preponderance of the evidence that the disciplinary action(s) taken were justified. This Grievance is DENIED.</p>

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

<u>KEYWORDS:</u>	Pay; Discrimination; Contract; Salary; Calculation; Error; Ultra Vires; Overpayment; Repay
<u>CASE STYLE:</u>	<u>Ward v. Mingo County Board of Education</u> DOCKET NO. 2015-1085-CONS (4/21/2016)
<u>PRIMARY ISSUES:</u>	Whether Grievant proved his claims of contract violation and discrimination by a preponderance of the evidence.
<u>SUMMARY:</u>	<p>Grievant is employed as a principal and holds a 230-day contract. At the beginning of the 2014-2015 school year, a payroll clerk made an error in calculating Grievant's salary which resulted in his salary being set \$13,512.77 more than it should have been. The error was not discovered until February-March 2015. Upon finding the error, Respondent reduced Grievant's pay to the correct salary amount effective March 30, 2015, and sought repayment from Grievant for the overpayment he had received. Grievant asserts that he should have been paid at the higher rate for the remainder of the year, and that Respondent violated his contract by reducing his pay in March 2015. Grievant also alleges discrimination as the principal and assistant principals at another school were not asked to repay any of their salaries. Respondent denies Grievant's claims, and argues that its decision to reduce Grievant's pay in March 2015 and seek repayment was proper because Grievant was overpaid as the result of an ultra vires act to which it is not bound. Further, Respondent argues that there was no discrimination because it could not be determined that those other administrators were overpaid. Grievant failed to prove his claims by a preponderance of the evidence. Therefore, this grievance is DENIED.</p>

KEYWORDS: Reassignment; Itinerant Position; Arbitrary and Capricious; Seniority

CASE STYLE: Savage v. Preston County Board of Education

DOCKET NO. 2015-1527-PreED (4/11/2016)

PRIMARY ISSUES: Whether Grievant demonstrated that Respondent's decision to move her to another school was arbitrary and capricious.

SUMMARY: Grievant, an itinerant Nurse, argues that she should not have been moved from Kingwood Elementary School to Bruceton School, because there was still a need for a Nurse at Kingwood Elementary School. Respondent does not dispute that there was still a need for a Nurse at Grievant's school, but points out that one itinerant Nurse had to be moved due to the Nurse at Bruceton School leaving and the loss of one Nurse position, and that it decided the most fair way to achieve the goal in this case with the least amount of disruption, was to focus on the area of the county where one Nurse position would be lost, and then move the least senior Nurse assigned to that area to another area of the county. Grievant did not demonstrate that Respondent's method of filling the vacancy left at Bruceton School was arbitrary and capricious.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
SERVICE PERSONNEL

<u>KEYWORDS:</u>	Termination; Contract; Insubordination; Seating Rule; Preschool Children
<u>CASE STYLE:</u>	<u>Stewart v. Doddridge County Board of Education</u> DOCKET NO. 2016-0962-CONS (4/27/2016)
<u>PRIMARY ISSUES:</u>	Whether Respondent provided that Grievant engaged in conduct constituting insubordination.
<u>SUMMARY:</u>	Grievant's substitute bus operator contract was terminated by Respondent on November 30, 2015, following the suspension of his employment by Superintendent Coffman. The termination followed a hearing held before the Doddridge County Board of Education on a charge of insubordination. The evidence established that Grievant was trained and repeatedly counseled that the front seats of the school bus must be kept clear for preschool children. Grievant's repeated choice not to follow the seating rule for preschool children, of which he was fully aware, amounted to insubordination. As a result, Respondent proved by a preponderance of the evidence that it properly exercised its authority in terminating Grievant's substitute bus operator's contract.
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<u>KEYWORDS:</u>	Extra Duty Assignment; Untimeliness; Fifteen Days
<u>CASE STYLE:</u>	<u>Long v. Wetzel County Board of Education</u> DOCKET NO. 2015-0754-WetED (4/8/2016)
<u>PRIMARY ISSUES:</u>	Whether Respondent proved by a preponderance of the evidence that this grievance is untimely.
<u>SUMMARY:</u>	The record of this matter demonstrates that Grievant failed to file a grievance within fifteen days following the occurrence of the event upon which the grievance is based. Accordingly, this grievance is dismissed as untimely.

KEYWORDS: Work Schedules; Hours Worked; Untimeliness; Continuing Practice; Normal Workweek; Bus Operator Work Hours; Policy

CASE STYLE: Sprouse, et al. v. Lewis County Board of Education

DOCKET NO. 2015-0207-CONS (4/1/2016)

PRIMARY ISSUES: Whether Grievants are entitled to additional compensation when they work between 30 and 40 hours in a week.

SUMMARY: Grievants claim that, because Respondent has a policy in place which states that the “normal workweek” for a Bus Operator is 30 hours, Grievants are entitled to additional compensation for time worked over 30 hours in a week. Respondent’s policy does not in any way provide for such additional compensation, nor have Grievants demonstrated that they are by law entitled to such additional compensation. Respondent did not prove its assertion that the grievance was untimely filed, based on the fact that the policy at issue has been in place for many years. The grievance was timely filed as it was not a challenge to the policy, but rather, a claim for additional pay, which was timely filed under both the continuing practice exception and the fact that Grievants had only recently realized they were not being compensated for any hours they worked over 30 hours in a week.

TOPICAL INDEX
STATE EMPLOYEES

<u>KEYWORDS:</u>	Motion to Dismiss; No Relief; Suspension; Misclassification
<u>CASE STYLE:</u>	<u>Gregory II v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital</u> DOCKET NO. 2014-1189-DHHR (4/19/2016)
<u>PRIMARY ISSUES:</u>	Whether the remedy which Grievant seeks in his grievance is available through the grievance procedure.
<u>SUMMARY:</u>	Grievant, Steven Gregory, II, is employed by Respondent, Department of Health and Human Resources, at William R. Sharpe, Jr. Hospital. Respondent moved to dismiss this grievance stating that there is no claim upon which relief can be granted. Respondent proved by a preponderance of the evidence that this case should be dismissed. Accordingly, this Grievance must be DISMISSED.

<u>KEYWORDS:</u>	Time Limits; Untimeliness; Level Three Appeal
<u>CASE STYLE:</u>	<u>Love, et al. v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital</u> DOCKET NO. 2015-1250-CONS (4/18/2016)
<u>PRIMARY ISSUES:</u>	Whether Grievants proved a proper basis to excuse their failure to file in a timely manner.
<u>SUMMARY:</u>	Respondent proved by a preponderance of the evidence that the consolidated grievances were not filed within the statutory time limits and Grievants did not prove any reason existed to extend the time period. Accordingly, the consolidated grievances are DISMISSED.

KEYWORDS: Employee Performance Appraisal; Evaluation Process; Abuse of Discretion; Division of Personnel Policy; Arbitrary and Capricious

CASE STYLE: Matthews v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital
DOCKET NO. 2015-0395-DHHR (4/15/2016)

PRIMARY ISSUES: Whether Grievant's supervisor abused his discretion in evaluating Grievant.

SUMMARY: Grievant has been employed at Sharpe Hospital for thirty years. Grievant's current job title is Interim Business Manager, which Grievant moved into on May 1, 2014. Grievant's previous job title was Accounting Tech 3. Grievant's supervisor issued her Employee Performance Appraisal 3 for the rating period September 1, 2013, through August 31, 2014, on or about September 23, 2014. Although Grievant was working as the Interim Business Manager at the time of her Employee Performance Appraisal, she was rated on her performance as an Accounting Tech 3. Hence, Grievant received no evaluation on the supervisory duties she performed during the five months she was working as Interim Business Manager. Grievant established that this failure to evaluate her duties in this position resulted in ratings that were not rendered in accordance with procedures established in West Virginia Division of Personnel Policy DOP-17 governing the employee performance appraisal process. Accordingly, this grievance is granted.

KEYWORDS: Non-Disciplinary Demotion; Uniforms and Accommodations; Disability; Clothing Allowance; Arbitrary and Capricious

CASE STYLE: Bolen v. Division of Highways
DOCKET NO. 2015-1189-DOT (4/13/2016)

PRIMARY ISSUES: Whether Respondent's actions in implementing the voluntary demotion were arbitrary and capricious. Whether Grievant provided that the clothing allowance is a legitimate accommodation.

SUMMARY: This grievance raises two distinct issues: 1) whether Grievant should be allowed to substitute denim pant (blue jeans) for his uniform pants to accommodate his fabric allergy, and be compensated by the DOH for this accommodation. (Grievance seeks a clothing allowance of \$125 per month as an accommodation his allergy to the uniform); and, 2) whether Grievant is entitled to back pay for the time between Grievant requested to be voluntarily demoted to a TW 3 position and the time the demotion actually took place. Grievant did not prove by a preponderance of the evidence that he was entitled to the clothing allowance of \$125 per month or back pay related to his demotion.